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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

DEIRDRA J. BROWN,
212 Rosecliff Drive
Harvest, AL 35749
Plaintiff

v.

JOHN D. ASHCROFT in his official capacity as ATTORNEY GENERAL
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530, and

ALICE MARTIN, in her official capacity as UNITED STATES ATTORNEY
400 Meridian Street, Suite 304
Huntsville, Alabama 35801
Defendants

CIVIL COMPLAINT TO COMPEL
DISCLOSURE OF AGENCY RECORDS
UNDER FOIA AND THE PRIVACY ACT

Comes plaintiff, Deirdra J. Brown, *pro se*, pursuant to the "Privacy Act" and the Freedom of Information Act ("FOIA") and files this civil complaint to compel disclosure of agency records maintained by the United States Attorney's Office, Northern District of Alabama ("USAO-NDAL") and the Department of Justice (the "agency").

1. Nature of the Case

1.a This complaint arises out of events occurring in the Huntsville Branch Office of the United States Attorney's Office for the Northern District of Alabama between March, 1998 and May, 2002. For four years, former Assistant United States Attorney Deirdra J. Brown, was

targeted by employees of the United States Attorney's Office. These employees labeled Plaintiff a "black bitch," called Plaintiff "rude and arrogant," sabotaged Plaintiff's work, slashed the front passenger side tire of Plaintiff's car, and leveled false allegations of federal misconduct at Plaintiff in an attempt to have her fired and indicted. This illegal discriminatory conduct was severe and pervasive, creating a hostile work environment for Plaintiff and interfering with her official duties. Plaintiff repeatedly reported this activity to management, but United States Attorney G. Douglas Jones and United States Attorney Alice Martin chose to turn a blind eye to this harassment.

1.b The Department of Justice and the United States Attorney have in their control and possession, agency records documenting this pattern of race and gender abuse and hostility against Plaintiff. Despite repeated requests, the Department of Justice and the United States Attorney's Office have unlawfully withheld these documents, and continue to refuse to disclose them to Plaintiff and to public scrutiny.

1.c Plaintiff brings this action pursuant to the Freedom of Information Act and the Privacy Act, to enjoin Attorney General John Ashcroft and United States Attorney Alice Martin from continuing this unlawful activity, and to compel them to disclose the requested agency records as required by law. 5 U.S.C. 552(a)(3)(A) and 5 U.S.C. 552A(b)(1)(B), (b)(1)(C), (b)(1)(D), (d)(1) and (g)(1)(B).

1.d Plaintiff alleges further that the circumstances surrounding the decision to withhold these documents is arbitrary and capricious, and asks that this Court order the Office of Special Counsel to initiate proceedings immediately to determine whether disciplinary action is warranted against United States Attorney Alice Martin, and any other officer or employee

primarily responsible for withholding these documents. 5 U.S.C. 552(a)(4)(F)

1.e Plaintiff alleges in the alternative that United States Attorney Alice Martin and the Department of Justice have acted deliberately, intentionally and willfully. The deliberate concealment of agency records that would corroborate illegal and discriminatory employment practices cannot be tolerated from the very agency we count upon as citizens of this Country to *enforce* the Civil Rights laws. Accordingly Plaintiff asks that the Court order the Department of Justice to pay actual damages, attorney's fees and costs as determined by the Court. 5 U.S.C. 552A(g)(1)(4).

2. Jurisdiction and Venue

2.a This action arises under the laws of the United States of America, specifically Title 5, United States Code section 552A et. seq. ("the privacy act"), and Title 5, United States Code section 552 et. seq. ("FOIA").

2.b This Court's jurisdiction derives from Title 5, United States Code section 552A(g)(1)(D) and 552(a)(4). Venue in the Northern District of Alabama is proper pursuant to Title 5, United States Code section 552A(g)(5), and Title 5, United States Code section 552(a)(4).

3. The Parties

3.a Attorney General John Ashcroft, defendant, is sued in his official capacity as head of the United States Department of Justice. The United States Department of Justice is an "agency" as defined in Title 5, United States Code section 552A(a)(1) and 552(f)(1).

3.b United States Attorney Alice Martin, defendant, is sued in her official capacity as the politically appointed head of the United States Attorney's Office for the Northern District of Alabama. The United States Attorney's Office is an "agency" as defined in Title 5, United States

Code section 522A(a)(1) and 552(f)(1).

3.c Plaintiff is an adult female citizen of the United States of America and the State of Alabama. At all times material to this action, plaintiff was employed as an Assistant United States Attorney ("AUSA"), stationed in the Huntsville Branch Office of the United States Attorney's Office, Northern District of Alabama. Plaintiff is an African-American female with a bachelor's degree in History from Dartmouth College and a Law Degree from the University of Chicago Law School. Prior to accepting an appointment to serve as an Assistant United States Attorney in the Northern District of Alabama, Plaintiff served for five years as an Assistant Federal Defender in Washington, D.C. and Chattanooga, Tennessee. Prior to that, Plaintiff held the position of Judicial Law Clerk for United States District Judge Joseph H. Young, District of Maryland. In her first year as an Assistant United States Attorney, Plaintiff carried an exceptionally high and complex caseload as compared to more senior attorneys in the office.[1] In her third year as an AUSA, Plaintiff argued successfully before the Eleventh Circuit Court of Appeals in Atlanta Georgia and wrote and filed the offices first *en banc* appellate brief. Plaintiff successfully prosecuted a Dekalb County business man for procuring an assault rifle later used to murder a member of the Etowah County Drug Task Force; a case that upper management believed could not be won. During her four and a half years with the United States Attorney's Office, Plaintiff's performance was repeatedly rated as outstanding.[2]

4. Non-Party Participants

4.a G. Douglas Jones ("Jones') is the former United States Attorney for the Northern District

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[1] Exhibit 1: Criminal Management Report, Caseload Movement 10/1/97 - 9/30/98

[2] Exhibits 2, 3, 4, 5 and 6: Plaintiff's annual performance evaluations and spot award.

of Alabama. During his tenure, Jones was the Chief law enforcement officer in the Northern District of Alabama responsible for, among other things, enforcing the Civil Rights laws and protecting those who would undermine the constitutional rights of the citizens of Alabama. During his tenure, Jones spent a substantial amount of office time and resources preparing to try the 16th Street Church Bombing Case. On the crest of publicity from a successful verdict in the Church Bombing Case, Jones launched a bid for the United States Senate.

4.b China Davidson is the Administrative officer of the USAO and the official 'gate-keeper' for the United States Attorney. Davidson is responsible for ensuring that the United States Attorney complies with regulations meant to protect employees from harassment and humiliation associated with workplace hostility motivated by race and gender. Davidson has stated that she was appointed by Jones to take charge of "the situation" in Huntsville, and she stated that she had "a plan" to address the environment there. Davidson warned Huntsville supervisors that members of federal law enforcement had bugged the Huntsville Branch Office. Yet Davidson, an African-American female, participated in perpetuating the racially hostile environment in Huntsville and eventually provided information used to secure Plaintiff's termination.

4.c Robert J. Mclean was the criminal division chief during Jones' tenure. Mclean communicated directly with DEA agent personnel in Huntsville (the same personnel who participated in harassing Plaintiff along with the white-female USAO employee in Huntsville who repeatedly called Plaintiff a black bitch). Mclean repeated DEA Agent's negative comments about Plaintiff including the statement that Plaintiff was a "rude bitch."

4.d William Russell Chambers was a young and inexperienced prosecutor with no white collar crime experience. Though Chambers had some 12 years less experience than Conrad and

no white collar experience, Chambers replaced Hugh Victor Conrad as supervisor of the Huntsville Branch Office. Upon assuming the role as supervisor, Chambers stated that he was "not Plaintiff's friend." Chambers falsely reported that Plaintiff behaved unprofessionally, mislead Plaintiff about case assignments, and falsified Hugh Victor Conrad's personnel records.

4.e Hugh Victor Conrad was supervisor of the Huntsville Branch office of the USAO, until he reported a racially hostile environment to upper management. Before courageously reporting a racially hostile environment, Conrad was regarded by Jones and First Assistant Herbert B. Henry as the best white collar crime prosecutor they had ever seen. Conrad lead the entire Northern District of Alabama in all statistics including jury trials, cases opened and cases closed, often carrying three times the case load of lawyers in the Birmingham office.[3] He was cited by the evaluation team of the Executive office of United States Attorneys ("EARS") for handling an inordinate number of cases for the Northern District of Alabama.[4] Conrad lead the entire Country in Jury Trials involving major Savings and Loan Figures (regarded by many AUSAs as some of the most difficult cases ever tried) during his tenure as an AUSA in Texas. He has received numerous personal letters of commendation from the Attorney General of the United States and the Director of the FBI.[5] Conrad was a Member of the EARS Evaluation team, an elite group of AUSAs selected from around the country to evaluate other USAOs. He was one of only three AUSAs in the Northern district of Alabama to receive this elite designation.

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[3]Exhibit 1: Criminal Management Report, Caseload Movement 10/1/97 - 9/30/98

[4] Exhibit 7: Excerpts from EARS Evaluation of USAO-NDAL, 1999

[5] Exhibit 8, 9, 10, 11, 12, 13, 14, 15, and 16: Letters of commendation for Hugh Victor Conrad from Attorney General, Director of FBI, Acting Attorney General and others.

5. Statement of Facts

5.a Plaintiff was appointed to the position of Assistant United States Attorney on March 15, 1998. From her first days on the job, she was subjected to constant racial harassment from certain white employees of the United States Attorney's Office and four members of Federal Law Enforcement. These employees labeled Plaintiff "rude" and "arrogant," and spread rumors accusing her of unprofessional conduct causing severe damage to her reputation. These same employees of the United States Attorney's Office and members of federal law enforcement used racial slurs to describe Plaintiff, and obstructed her work.

5.b The front passenger side tire of Plaintiff's car was slashed, she was intimidated by an FBI Agent who showed her an aerial photograph of a building constructed in the shape of a Nazi Swastika [6] because he thought it would be "funny," and by Plaintiff's immediate supervisor (Will Chambers) who told Plaintiff that his grandfather was a member of the Ku Klux Klan. A white-female USAO employee falsely reported to the Office of Professional Responsibility that Plaintiff committed felony offenses in an effort to have her indicted and fired.[7] Though Plaintiff was cleared of the false charges[8], the investigation lasted two months and caused Plaintiff severe emotional and psychological damage. Several month's later, in connection with an FBI investigation of unlawful employment practices at the Huntsville Branch office of the FBI, the same white female USAO employee brazenly admitted responsibility for the anonymous OPR

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[6] Exhibit 17: FBI Letter of Censure against Huntsville Agent for racial misconduct against Plaintiff.

[7] Exhibit 18: "Anonymous" OPR referral triggering two month investigation of Plaintiff.

[8] Exhibit 19: Letter absolving Plaintiff of misconduct and closing OPR investigation.

referral.[9]

5.c This white female USAO employee and her accomplices repeatedly referred to Plaintiff as a "black bitch," falsely reported to personnel that Plaintiff was abusing leave time, removed personal documents from Plaintiff's desk, followed Plaintiff to her home and videotaped her.[10]

5.d Plaintiff reported these events orally and in writing to her direct supervisor Victor Conrad, to Administrative Officer China Davidson, to First Assistant Herbert B. Henry and to United States Attorney G. Douglas Jones. Plaintiff repeatedly complained of the environment at the Huntsville USAO in writing to management, yet acts of racial hostility persisted, escalated and seemingly no action was taken to protect Plaintiff.

5.e In January of 1999, unbeknownst to Plaintiff, Plaintiff's first line supervisor Victor Conrad (white male) wrote several memos to former United States Attorney G. Douglas Jones, documenting acts of racial hostility against Plaintiff and describing the environment as "viciously racially hostile."[11] Senior management in Birmingham told him to do nothing. Criminal Division

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[9] Exhibit 20: Sworn statement of white female USAO employee admitting her involvement in "Anonymous" referral.

[10] In May, 1999, an "anonymous" memo was sent to the personnel office in Birmingham accusing Plaintiff of leave time abuses, a felony offense. Conrad and Coker, two white employees in the Huntsville Branch Office, were also accused. The author of the "anonymous" memo states that Plaintiff is being followed and video-taped. Davidson and senior management conceal memo from Plaintiff. Plaintiff discovers accusations and asks for full investigation. G. Douglas Jones and China Davidson decline to investigate. The "anonymous" memo (a.k.a. the "cloud memo") is subject to disclosure under FOIA and the Privacy Act. Despite plaintiff's repeated FOIA/Privacy Act requests (Exhibits 24, 25, 26, 27, 28, 29) the Department of Justice has unlawfully failed to disclose this evidence to Plaintiff.

[11] Mr. Conrad's memos are subject to disclosure under Privacy Act and FOIA. To date, the United States Attorney has withheld these documents despite repeated FOIA/Privacy Act requests. (Exhibits 24, 25, 26, 27, 28, 29)

Chief Joe Mclean told him to "be quiet" about what was happening to Plaintiff. Administrative Secretary, Sandra Coker (white female) also reported acts of racial hostility in a memo to her supervisor and in a sworn statement given September 7, 1999.[12]

5.f Because of his written memos disclosing a racially hostile environment, G. Douglas Jones was irate with Conrad. Upon information and belief, Jones planned to use the 16th Street Bombing case as a stepping stone to run for United States Senate and he could not afford for Conrad's memos to become public. Prior to Conrad's memos Conrad was recognized by top management as one of the best white collar crime prosecutor they had ever seen. After writing memos memorializing a racially hostile environment, Conrad became a target. Conrad received the lowest annual performance evaluation ever in his tenure with the office. Jones ordered Conrad to take and pass the Alabama State Bar exam with no allotment for study and no reimbursement for expenses, and even though Conrad already held a license to practice law.

5.g Immediately after Conrad's written memos memorializing a racially hostile environment, there began a series of severe, unlawful reprisals against Conrad and Plaintiff in an attempt to silence them and force them to resign. Acts of reprisal included:

1. Threats by management of criminal prosecution against Conrad.
2. Horrible threatening phone messages left for Conrad's wife and children on Conrad's home answering machine. Conrad asks Jones and senior management to investigate. Jones declines.

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[12] Ms. Coker's memo and sworn statement are subject to disclosure under FOIA & the Privacy Act. To date, the United States Attorney has withheld these documents despite repeated FOIA/Privacy Act requests (Exhibits 24, 25, 26, 27, 28, 29).

3. Surveillance of Conrad and Plaintiff by threatening individuals who do not identify themselves. Plaintiff asks Jones to investigate, Jones declines.

4. "Anonymous" referral sent to Washington, D.C. Office of Professional Responsibility accusing Plaintiff and Conrad of felony criminal misconduct. Plaintiff and Conrad ask Jones to investigate source of charges. Jones declines.

5. FBI investigation discloses that white female USAO employee in Huntsville is the source of "anonymous" OPR charges against Plaintiff. Still, Jones, Davidson and senior management at the USAO take no action to protect Plaintiff.

6. FBI investigates and censures FBI Agent for racial misconduct against Plaintiff. Jones, Davidson and senior management still take no action to protect Plaintiff or correct racially hostile environment in Huntsville.

7. Davidson and Jones reward white-female employee who referred to Plaintiff as a "black-bitch" by offering her an all expense paid move to Birmingham. Davidson takes position that the only reason for the transfer is that white employee's skills are needed in Birmingham. Jones, Davidson and senior management offer to buy white employee's house in Huntsville with federal funds, and pay white employee's moving expenses. In contrast, Plaintiff's request for two year TDY out of the office in May, 1999, is declined by Jones and Chambers. Jones also declines Conrad's request to be transferred out of the office.

8. Immediately after Plaintiff puts details of racially hostile environment in writing, Jones refuses to meet with Plaintiff to discuss racially hostile environment, and

reduces Plaintiff's annual performance appraisal, by backdating Plaintiff's personnel records.[13]

9. Federal drug enforcement employees who work out of the Huntsville USAO refuse to work with Plaintiff. DEA Agent calls Plaintiff a "rude bitch" because Plaintiff requests that he disclose Henthorn evidence.[14] Plaintiff later learns that DEA Agent has committed official misconduct. Management (Joe McLean) supports DEA agent over Plaintiff. Mclean repeats statement that Plaintiff is a "rude bitch."

10. Jones personally and unlawfully instructs Plaintiff to withhold evidence needed by Conrad to prove his claim against the government.

11. In an effort to intimidate Plaintiff and destroy her reputation, Jones tells Plaintiff she will be fired and his senior management team (John Earnest, Section I Chief) spreads rumor among federal courthouse personnel that Plaintiff has been fired, causing irreparable damage to Plaintiff's reputation.

12. Chambers and top management backdate Conrad's personnel records, then cause three false FOIA returns to be made in an effort to justify lower performance evaluation.

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[13] Exhibits 21 and 22: E-mail dated March 22, 1999 from G. Douglas Jones telling Plaintiff that he will not meet with her to discuss racially hostile environment in Huntsville, and Memo from G. Douglas Jones dated March 22, 1999 backdating Plaintiff's annual performance evaluation and reducing her rating from excellent to average.

[14] United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991) held that the government has a duty to examine the personnel files of testifying law enforcement agents for information that may affect their credibility as witnesses, and to disclose such information to defense counsel.

13. In contravention of office policy, senior management instruct Plaintiff and Conrad that they must take and pass the Alabama State Bar before July, 2000.[15]

14. In midst of crisis, Chambers maliciously coaches his young son to tell Plaintiff she is "fired." Chambers' son raises arm, points at Plaintiff and says "You're Fired," causing Plaintiff severe emotional distress.

15. Jones lies to Conrad about position, supervisory control and case assignments. Criminal Chief Joe Mclean tells Conrad Jones' decision to renege on promises by Jones is just "too bad,"" and to "keep quiet about what is happening to [Plaintiff]."

16. AO Davidson unlawfully tells Plaintiff not to file EEO claim against Jones stating "Jones has done more for African-Americans than any previous United States Attorney." Plaintiff is stunned and silenced by Davidson's comments. Other than Davidson, there has only been one minority in a position of authority in the United States Attorney's Office, Northern District of Alabama since the inception of the office over forty years ago.

17. While Conrad is on government approved leave, Chambers refers to Conrad as AWOL and "crazy," causing irreparable harm to Conrad's reputation.

18. Despite good performance evaluations, Jones, Davidson and management keep

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[15] Exhibit 23: Excerpt from Criminal Division Manual stating office policy that attorney's *need not* be licensed in Alabama, but need only be members in good standing of "a bar in some jurisdiction." Plaintiff is a member in good standing of the State bars in Tennessee and New York. Conrad is a member in good standing of the bar in Texas.

Plaintiff in a perpetual probationary status for 4 ½ years.[16] Jones, Chambers and Davidson repeatedly remind Plaintiff that she is a conditional employee subject to termination without cause.

19. Jones tells Conrad he should resign. Initiates internal investigation against Conrad. Senior management spreads rumor to federal law enforcement community severely damaging Conrad's reputation.

20. Chambers threatens Plaintiff. Tells her that she could be fired if she provides Conrad with legal research assistance.

21. Conrad files two complaints against Jones and office, requests permission to interview witnesses concerning misconduct of Jones, Davidson and Chambers.

22. Plaintiff meets with Conrad, then advises Chambers that she has reviewed Conrad's complaint against office and that Chambers, Davidson and Jones are named as defendants.

23. Chambers misleads Plaintiff about certain high profile case assignments, assigns cases to new, less experienced white-male attorney, then recommends new, less experienced white-male attorney for position of Plaintiff's supervisor. Martin promotes white-male attorney to position of Plaintiff's supervisor.

24. Plaintiff is selected by the Executive Office in Washington, D.C. to attend the Franco-American Criminal Justice Seminar in Paris France. Plaintiff is one of six

[16] In a FOIA/Privacy Act request file August 9, 2002, plaintiff asked for agency records maintained by the Office of Personnel management about her designation as a perpetually probationary employee. (Exhibit 31) The department of Justice has declined/failed/refused to disclose a copy of this file to Plaintiff.

attorney's selected nationwide. Martin prohibits Plaintiff from attending seminar telling Plaintiff that she failed to "ask for permission to apply for the position."

25. Plaintiff files an EEO complaint against Martin, Chambers and the office alleging disparate treatment, race discrimination, retaliation and hostile work environment. Martin and Chambers find out about Plaintiff's EEOC complaint and fire Plaintiff.

26. Martin and Chambers falsely accuse Plaintiff of misconduct severely damaging her reputation.

6. Prayer for Relief

6.a For all of the above stated reasons, the United States Attorney and the Department of Justice have unlawfully withheld, and continue to withhold documents that are subject to compelled disclosure under FOIA and the Privacy Act.

6.b The privacy act places an obligation on government agencies to give employees access to records maintained about them, and to furnish employees with copies of such records upon demand. 5 U.S.C. 552A(d)(1). An agency must also promptly correct false, irrelevant, untimely or incomplete information maintained about that employee when directed by an employee to do so. 5 U.S.C. 552A(2). Accurate, complete, relevant and timely records are particularly crucial when an agency seeks to terminate an individual, or make other adverse determinations about an individual's rights, benefits and privileges under Federal programs. 5 U.S.C. 552A(e)(2) and (e)(5). Plaintiff has repeatedly asked the United States Attorney and the Department of Justice to provide her with documentation supporting their decision to keep her in a perpetual (4 ½ year) probationary status, and evidence, if it exists, of any counseling or disciplinary action taken

against Plaintiff prior to terminating her from her position on May 13, 2002. (Exhibits 24-33) Plaintiff has also asked the United States Attorney's Office and the Department of Justice to correct false information contained in her personnel file regarding false accusations made in the letter of termination. To date, the Department of Justice has refused to correct this misinformation; information that threatens to destroy Plaintiff's career. (Exhibit 33)

6.c The Freedom of Information act requires an agency to disclose records not subject to specific exceptions, within 20 business days after receipt of a request. 5 U.S.C. 552(a)(6)(A). Plaintiff has repeatedly requested disclosure of documents that are not specifically excepted from disclosure, and the United States Attorney's office has, to date, failed to comply with her requests. (See Exhibits 24, 25, 26, 27, 28, 29, 30, 31,32)

6.d Wherefore plaintiff prays that the Court grant the following relief:

1. Compel the United States Attorney and the Department of Justice to disclose any and all documents requested by Plaintiff in Exhibits 24-33, that are subject to disclosure under FOIA and the Privacy Act.

2. Find pursuant to 5 U.S.C. 552(a)(4)(F) that the agency's inaction and failure to comply with Plaintiff's repeated requests was "arbitrary and capricious."

3. In the alternative, find that United States Attorney Alice Martin and the agency have acted "deliberately, intentionally and willfully" in failing to respond to plaintiff's repeated requests. 5 U.S.C. 552A(g)(1)(4).

4. Award Plaintiff actual damages, attorney's fees and costs as determined by the Court

5. Order such other relief as the Court may find just and proper to vindicate Plaintiff's rights.

Respectfully submitted,

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212 Rosecliff Drive
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Date: October 29, 2002